



SAVVYTEL PTY LIMITED

ABN 40 138 008 107

TELECOMMUNICATIONS SERVICES AGREEMENT

PREPAID & POST-PAID (CAP) ACCOUNTS

SAVVYTEL IS A CARRIAGE SERVICE PROVIDER OF TELECOMMUNICATIONS PRODUCTS IN THE AUSTRALIAN MARKET.

THE TELECOMMUNICATIONS INDUSTRY HAS MANY REGULATIONS AND BEING A SERVICE PROVIDER WE HAVE CERTAIN RESPONSIBILITIES TO OUR CUSTOMERS. OUR SERVICE AGREEMENT IS DETAILED BELOW.

TERMS AND CONDITIONS

SAVVYTEL PTY LIMITED (WILL PROVIDE YOU WITH THE SERVICES IN ACCORDANCE WITH THESE GENERAL TERMS AND CONDITIONS AND THE SERVICE DESCRIPTION.

SAVVYTEL - SERVICES AGREEMENT

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DEFINITIONS:

ACMA means the Australian Communications and Media Authority.

ACIFC570 means the Australian Communications Industry Forum Mobile Number Portability code. June 2001 (MNP code)

Act (or the Act) means the Telecommunications Act 1997.

Agreement means this Agreement.

Cap Plan means a designated monthly account plan offered by Savvytel which provide differing values of Service.

Carriage Service Provider has the same meaning as defined in Section 87 of the Act.

Claim means any claim, action, proceeding, judgment, damage, loss, expense or liability, including legal costs, whether direct or indirect, however calculated.

CLI means Calling Line Identification.

Confidential Information means all confidential information about the Service, Savvytel, its Related Bodies Corporate, the Network, or a Customer, which is or has been disclosed under or in connection with this Agreement; or learnt or acquired in the performance of this Agreement, other than any such information which:

- was in the public domain at the time of its provision, otherwise than through a disclosure in breach of this agreement; or
- lawfully came into the possession of the other party otherwise than as a result of a disclosure in breach of this agreement.

Connection and Connected means the activation of the Service.

Consequential Loss includes: indirect loss and special damages; loss of revenue; loss of profits; loss of business; loss of anticipated savings; loss of goodwill; loss of data; claims of third parties; and loss or costs associated with any of the above.

Credit Limit means the maximum value provided to a Customer under a CAP Plan account.

Customer means the person identified or nominated as and is contracted to meet all costs relating to the use of the Service.

Disconnection or disconnected means the disconnection of a Connection to the Service.

Duplicate IMEI Handset has the meaning given in clause 21(d).

GPRS means General Packet Radio Service.

GPRS Compatible Handset means a phone specified by Savvytel to be compatible with GPRS.

Grace Period means the number of days between when a pre-paid account balance falls to zero and before the mobile number is placed in Quarantine (a period of six months).

GSM means Global System for Mobile handsets.

GST has the meaning given to that term on the A New Tax System (Goods and Services Tax) act 1999.

Handset means a physical (mobile) phone into which a SIM is inserted to gain access to the Service.

Handset Blocking means a block placed on the IMEI of a GSM Handset.

IMEI means International Mobile Equipment Identity.

Insolvency Event means the happening of any of the following events in relation to a party if:

- a) a natural person, becomes bankrupt;
- b) a company or registered business: it resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to so resolve, becomes unable to pay its debts when they are due or becomes unable to pay its debts within the meaning of the *Corporations Law*, or is presumed to be insolvent under the *Corporations Law*, an external administrator or official manager, a receiver or receiver manager, a provisional liquidator or liquidator, or similar officer is appointed in respect of it.

Network means the Vodafone Mobile Digital Network or such other network as is accessed from time to time.

Non-excludable Rights means rights and remedies conferred on a party by the *Trade Practices Act 1974* and similar legislation which cannot be excluded, restricted or modified.

Partnership includes all partners of the partnership, jointly and severally who are partners at any given time.

Port or Porting means the transfer of an MSN between suppliers of mobile telecommunication services.

Pre-Paid means payment being made in advance for use of the Service.

Re-connected means the re-activation of a Connection which has been disconnected.

Related Body Corporate has the meaning given to the term in the *Corporations Law*.

Roam or Roaming means where a Customer uses the Service by connection onto another mobile communications carrier's network either within or outside Australia.

Service means the mobile digital service provided by Savvytel on the Network and as described in Section 2 of this Agreement.

Service Provider means Savvytel Pty Limited.

SIM means the Subscriber Identity Module (which remains the property of Savvytel) used with a GSM to enable use of the Service.

SMS means Short Message Service.

Value Added Services are those services as detailed in Section 2 of this Agreement.

WAP means Wireless Application Protocol which provides access from compatible handsets to some interactive information, email and other services.

SECTION 1 – GENERAL INFORMATION:

1 Overview:

This Agreement outlines the terms and conditions upon which Savvytel will provide the Service to Customers, and how Customers can use the Service, via either a Pre-paid or monthly CAP Plan account. The Service is provided via the Network and is used to make and receive voice calls to and from:

- telephone numbers connected to the Network or connected to the network of any other mobile phone service or telecommunications carrier;
- other Australian public telephone numbers; and
- international public telephone numbers.

The Service is subject to interconnection arrangements between Savvytel and the relevant operator of the Network with which the number is associated. The Service includes numbers in the 04xy range. If Customers have compatible equipment, the Service can also be used to access the internet and make and receive data and fax calls.

Savvytel may change the terms of this Agreement and/or vary its fees and charges at any time, and from time to time by complying with the CMA legislation (by advising you directly or publishing an advert in a national newspaper if the change is detrimental to the Customer) and the Customer acknowledges that prior to using the Service it is aware of the terms of this Agreement and of Savvytel's current fees and charges which are available for viewing on Savvytel's web site: www.savvytel.com.au. The Service ends when a Customer's account is terminated or is Disconnected from access to the Service.

Savvytel may pay an agent a commission for introducing a Customer to the Service.

2 Getting Started:

Savvytel will provide the Service on a no fixed-term basis until the Service is cancelled.

Connection to the Service requires the activation of a Savvytel SIM, which, when inserted into a Handset activates a Handset to enable use of the Service on the Network. A Customer's contract with Savvytel, and hence the provisions of this Agreement commence on the activation of a Savvytel SIM.

Calling Line Identification is automatically activated on commencement of the Service. If you do not want your number displayed it is your responsibility to deactivate this functionality.

3 Interpretation:

In this agreement, unless the context otherwise requires:

- a) headings are for convenience only and do not affect interpretation;
- b) the singular includes the plural and visa versa;
- c) all references to dollars, value and price are to the Australian currency;
- d) references to a party includes its successors and permitted assigns;
- e) references to payment to any party includes payments to another person on the direction of that party; and
- f) a reference to any statute includes any amendments, re-enactments or replacements to that statute from time to time.

This Agreement constitutes a Standard Form of Agreement within the meaning of the Act.

4 Savvytel Contact Services:

Savvytel's Contact Services are a suite of answering and message services which are outlined in Section 2 of this Agreement.

5 Customer Care Service:

Customer Care personnel are available to answer your questions by phoning **1300 885 446** during the hours of 8.0am to 1.30am Monday to Friday and 9.0am to 9.30pm Saturday and Sunday (Sydney time). Outside these hours a message can be left and the enquiry will be attended to as soon as possible the following business day. Alternatively, you may email us at:

customercare@savvytel.com.au.

6 Network Coverage and Service Provision:

Savvytel makes no representation or warranty as to the extent of coverage of the Service; you must satisfy yourself that Vodafone coverage is adequate in your area; the Vodafone site address is:

www.vodafone.com.au/personal/services/coverage/maps/index.htm

Furthermore, the Service is not free from faults or interruptions, and may only be used with a compatible Handset or other device. Area coverage restrictions and reception quality are subject to local conditions which can include; basement car parks, lifts, buildings, mountains, road tunnels and remote locations from a signal tower. Furthermore, the Customer acknowledges that the services may not be available from time to time as a result of a number of factors, including capacity constraints, electromagnetic interference, adverse weather conditions, excessive Network use, equipment or Phone failure and that the WAP GPRS coverage area may be smaller than the coverage area for other Services.

7 Mobile Phone Number:

Subject to the national regulatory policy on numbering:

- a) Unless the Customer ports their existing number from another Carriage service Provider Savvytel will allocate a number to a Customer's Service and may vary that number from time to time.

- b) the Customer does not own the number and cannot claim any legal interest or goodwill in any number allocated to it.
- c) Savvytel is not and cannot be held liable for any cost or financial loss incurred by a Customer due to it ceasing to have use of the number, however caused.

8 SIMs:

- a) SIMs remain the property of Savvytel which specifies certain procedures for activation of a SIM to protect against unauthorised use. You must return the SIM within a reasonable time if requested by Savvytel, if Savvytel suspend or terminate the Services, or if you are disconnected from the Services.
- b) You must take all reasonable care to keep the SIM safe and in good condition. Refunds will only be provided for SIMs that have technical faults and were not the result of misuse by a Customer.
- c) You must notify us immediately if any SIM is lost, stolen or destroyed (whether Connected or not). You will be responsible for the cost of a replacement SIM, at the rate shown in the Standard Rate Table.
- d) You will be liable for the charges incurred through the use of the Services supplied in relation to your SIM. This includes the charges incurred through the use of the Services where your SIM has been lost, damaged or stolen (whether Connected or not) prior to Savvytel being notified of the loss or theft.
- e) You must obtain Savvytel's express authorisation to use the SIM in countries other than Australia. If you are authorised to Roam, You will be charged a roaming fee for incoming calls at a rate set by the operator in that country and a forwarding charge for all incoming calls forwarded to the overseas carrier.
- f) Savvytel has the right to refuse the provision of subsequent SIMs to you, once you apply to receive, or currently have registered in your name or an associates name, two (2) or more Savvytel SIMs.

9 MSN Porting to Savvytel:

If in establishing a Service with Savvytel you want to retain an existing MSN it will be done in accordance with the MNP Code and this clause.

- a) You are to notify us of your intention to Port your existing MSN when ordering your Starter Pack or when you Connect. In porting your existing number you agree to our MSN Porting Terms and Conditions;
- b) On Porting, only your MSN switches to Savvytel, no existing value added services with your current Supplier will be transferred, which may result in the loss of (or the loss of access to) these services from your current Supplier, including voice mail, SMS, paging or facsimile services. However, such services may instead be provided by Savvytel upon your application and payment of any relevant fees;
- c) If you have an ongoing contract and contractual obligations with your current Supplier it will most likely require the payment of outstanding costs together with a cancellation or termination fee;
- d) In the event Savvytel becomes liable to a third party in relation to any Service supplied to you prior to Porting you will indemnify Savvytel and keep Savvytel indemnified against any and all such liability including any costs, including legal costs, incurred in connection with any such liability.
- e) Savvytel will use all reasonable efforts to port your MSN on or before the requested cut-over date but has no responsibility or liability to you for any delays in Porting caused for any reason, including but not limited to insufficient or incorrect information being provided by you. The requested cut-over date should not be more than 30 days from the date of making the request to Port your MSN.
- d) You are responsible for ensuring that your handset is GSM compatible. If you are Porting from a CDMA network or another mobile platform, you may need to purchase a GSM compatible handset.
- e) You are responsible for ensuring that your handset does not have Network Locking applied by your existing Supplier. You may need to get any SIM security or Network Locking removed by your current Supplier; have your Phone re-programmed prior to porting or get a new handset.

10 MSN Porting From Savvytel:

If you Port your number to another Supplier, then:

- a) You remain responsible to us for amounts payable prior to the Port-out, and
- c) You will forfeit any remaining Call Credits in your Account.

11 Obligations and Responsibilities of Customers:

- a) Customers obligations and responsibilities include but are not limited to:
 - i) keep their Handset and SIM safe and in good working condition;
 - ii) returning the SIM to Savvytel immediately upon request;
 - iii) notifying Savvytel immediately of any lost, stolen or damaged SIM;
 - iv) accepting responsibility for and paying Savvytel all fees and charges incurred in their use of the Service from the SIM issued to them, including government taxes, duties, imposts or levies;
 - v) complying with all laws, regulations and guidelines concerning use of the Service;
 - vi) cooperating with and follow all reasonable instructions by Savvytel and cooperate with it in relation to the use of the Service; and
 - vii) notifying Savvytel as soon as it becomes aware of any claim it may have against Savvytel in relation to the Service.
- b) Customers must not:
 - i) Disclose to any person any Confidential Information or security number provided by Savvytel (including but not limited to the Customer's enquiry number, barring number or personal identification number);
 - ii) Use the Service for any improper, immoral, unauthorized or unlawful purpose or allow any other person to use the Service for such purposes;
 - iii) Use the CLI or information derived from the CLI except in accordance with the Act;
 - iv) Place, attempt to place or accept a reverse charge call using the Service; and
 - v) Re-sell, distribute or reproduce any part of the Service.

12 Personal Information and Identification:

You acknowledge that all Suppliers of GSM services are required to obtain evidence of a Customer's identity and that:

- a) Savvytel can refuse to supply the Service if the required evidence is not provided;
- b) Savvytel may subsequently require you to produce additional proof of identity including your name and address, and Savvytel may suspend the Service until that additional proof is provided;
- c) You must provide Savvytel with any change in your residential address and/or e-mail address to Savvytel within 14 days of any change by contacting Savvytel using our Website;
- d) Savvytel and/or its agents and, if applicable, Savvytel's other service and content service providers may collect Customer personal information. Savvytel collects the personal information to provide the Service and may use the personal information for purposes that are related to providing the Service that would be reasonably expected (including keeping the Customer informed about features of available Services or conducting analysis in order to provide a better service).
- e) Savvytel will provide Customers with access to their personal information in accordance with the Privacy Act.
- f) Savvytel may receive and disclose personal information or documents about Customers to or from:
 - i) Credit providers or credit reporting agencies for purposes permitted under the *Privacy Act*;
 - ii) as directed by any Law enforcement or government agencies; or
 - iii) Savvytel's service and content providers, dealers and agents for purposes that are related to providing Customers with the Service, or to offer other services and/or products to you.
- g) Savvytel will not disclose personal information to third parties without the Customer's consent.
- h) The Customer acknowledges that any calls made to Savvytel's Customer Care centre may be recorded for service quality assessment or training purposes.

13 Assignment:

- a) The Customer must not transfer or assign any rights or obligations under this Agreement without the prior written permission of Savvytel.
- b) Savvytel may, without notice to the Customer:
 - i) transfer its rights and obligations under this Agreement to its nominee;
 - ii) temporarily or permanently delegate its obligations under this Agreement;
 - iii) require the Customer to novate this Agreement in favour of Savvytel's nominee; or Act with the Customer's irrevocable power of attorney to sign any necessary documents to enable any such transfer, delegation or novation.

14 Representations & Warranties:

- a) The Customer represents and warrants to Savvytel that it:
 - i) has provided full and accurate personal information in connection with this Agreement for the provision of the Service;
 - ii) has full power and authority to enter into this Service; and
 - iii) will take all necessary action to execute, deliver and perform this Agreement in accordance with its terms and conditions.
- b) Savvytel represents and warrants that:
 - i) it is a service provider under the Act; and
 - ii) subject to the terms and conditions of this Agreement it will provide the Service with all reasonable care and in a timely manner.

15 Title of Goods:

Except for any SIM, property in any goods which the Customer takes possession of under this Agreement passes to the Customer on full payment of monies due to Savvytel.

16 Limitation Of Liability:

- a) To the full extent permitted by law and subject to clause 10 c), Savvytel excludes all liability including any Consequential Loss under or in connection with this Agreement or the supply of the Service.
- b) Notwithstanding clause 10 a), Savvytel's maximum liability under or in connection with this Agreement or the supply of the Service will not exceed the total of all fees and charges paid by the Customer in relation to the Service charged over the 6 months immediately preceding the date of the Claim.
- c) Savvytel does not exclude any Non-excludable Rights but does exclude, and the Customer cannot rely on all other conditions, representations and warranties implied by custom, law or statute other than those expressly contained in this Agreement.
- d) Savvytel's liability in respect of any Non-excludable Right is limited at its option, to:

In the case of goods:

- i) the replacement of the goods or the supply of equivalent goods;
- ii) the repair of the goods;
- iii) the payment of the cost of replacing the goods or acquiring equivalent goods;
- iv) the payment of the cost of having the goods repaired.

In the case of services:

- v) the supply of the services again; or
- vi) the payment of the cost of having the services supplied again.

17 Indemnity:

- a) The Customer indemnifies Savvytel against all claims, actions, damages, losses, liabilities, costs, charges, expenses, outgoings or payment which Savvytel pays, suffers or incurs or is liable for in respect of the Customer's use of the Service.
- b) Clause 11 a) does not apply to any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Savvytel pays, suffers, incurs, or is liable for as a result of the willful misconduct or reckless act or omission of Savvytel.

- c) The indemnity in this clause 17 is a continuing obligation of a Customer which will continue despite:
- i) any settlement of account;
 - ii) the termination of this Agreement; or
 - iii) the occurrence of any other thing,

and remains in full force and effect until all monies owing to Savvytel by the Customer to have been paid in full.

18 Prohibition & Enforceability:

- a) Any provision of, or the application of any provision to this Agreement or a right, power, authority, discretion or remedy of a party under this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- b) Any provision of, or the application of any provision of this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of the remaining provisions in that or in any other jurisdiction. The application of this clause 12 is not limited by any other provision of this Agreement in relation to severability, prohibition or enforceability.

19 Waiver:

- a) Savvytel may not waive any right under this Agreement except in writing.
- b) A waiver by Savvytel will not prejudice its rights in respect of any subsequent breach of this Agreement by the Customer.
- c) A failure or delay in enforcing a right under this Agreement does not constitute a waiver.

20 GPRS Terms and Conditions:

- a) Savvytel's GPRS may only be accessed with a GPRS Compatible Handset.
- b) Savvytel does not represent, warrant or guarantee the extent to which a GPRS Compatible Handset will be able to access information on the internet or elsewhere. The ability of a Customer to access, use and download information will depend on the features and functionality of their Handset and the nature and quality of the information being accessed. Customers should note that the GPRS may be subject to congestion, delays and/or loss of transmitted data.
- c) The Customer acknowledges that the GPRS coverage area may be smaller than the coverage area for other digital mobile services.
- d) The Customer must comply with all conditions imposed by the content provider when accessing content using the GPRS.
- e) The Customer agrees that the following terms and conditions apply to their use of the GPRS: Savvytel is not obligated to monitor the content of information or material available from the GPRS or the Internet and that Savvytel is not liable for loss or damage suffered by the Customer or any other person as a result of using information or material obtained using the GPRS on the internet, including, but not limited to, loss or damage caused by a virus; and
 - i) the Customer is responsible for all equipment and software necessary to use the GPRS as well as for the security and integrity of any information the Customer transmits or receives.
 - ii) the Customer uses the GPRS accepting full risk and responsibility in doing so;
 - iii) the Customer acknowledges that Savvytel does not check any content; and
 - iv) the Customer will NOT use the GPRS for any activities which breach any laws, standards or codes or infringe a third party's rights, or breach any statements, content requirements or codes promulgated by any relevant authority including activities which will require Savvytel to take remedial action under any applicable industry code or in a way which interferes with other users or defames, harasses, menaces, restricts or inhabits any other user from using or enjoying the GPRS or the internet or which is indecent, obscene or otherwise offensive.
- f) The terms and conditions in clause 20 are GPRS Specific Terms and Conditions. Where there is any conflict between the GPRS Terms and Conditions and the other terms and conditions in this Agreement, the GPRS Terms and Conditions prevail.

21 Handset Blocking:

- a) Handset Blocking is only available in respect of GSM handsets.
- b) A Customer may only request Savvytel to block a GSM Handset at the time, or within one month after the time, that the Customer requests the Service to be suspended or disconnect for reason of loss or theft of the Customer's SIM.
- c) Savvytel must as soon as reasonably practicable after being requested to do so by a Customer:
 - i) subject to clauses 21b) and 21 e), block a GSM Handset; and
 - ii) subject to verifying to its satisfaction that a Customer has lawful possession of a GSM Handset which has previously been blocked, unblock the Handset.
- d) The Customer acknowledges that:
 - i) Handset Blocking is at all times subject to technical limitations;
 - ii) Handset Blocking is dependent upon the IMEI of GSM handsets;
 - iii) Multiple GSM Handsets may have the same IMEI; and
 - iv) where 2 or more GSM Handsets connected to the Network have the same IMEI ("**Duplicate IMEI Handset**"), the blocking of one such Duplicate IMEI Handset will also result in the other Duplicate IMEI Handset(s) becoming blocked.
- e) Savvytel reserves the right not to block a GSM Handset where:
 - i) the Handset is to Savvytel's knowledge a Duplicate IMEI Handset; or
 - ii) to do so would adversely impact another Customer's use of the Service in good faith.
- f) Where Savvytel has blocked a GSM Handset upon request by a Customer and is subsequently notified by another Customer that the handset is a Duplicate IMEI Handset, Savvytel will unblock the handset as soon as reasonably practicable following such notification (subject to it verifying to its satisfaction the other Customer's lawful possession of a Duplicate IMEI Handset).
- g) Where a Customer's Duplicate IMEI Handset is blocked as a consequence of Savvytel blocking the Duplicate IMEI Handset of another Customer, Savvytel will not be liable for any loss or damage incurred by the first mentioned Customer as a result of or in any way in connection with the first mentioned Customer's Duplicate IMEI Handset becoming blocked.
- h) The Customer acknowledges that where Savvytel has blocked a GSM Handset that the Handset will not be able to be used on the Network except in respect of the following services:
 - to make voice calls to emergency numbers "000" and "112"; and
 - to receive voice calls or SMS or MMS messages.

22 Grace Period:

The Grace Period of thirty (30) days commenced when a Customer's account falls to \$0.0, during which time a Customer is required to recharge their account. A Customer will not be able to use the Service during this period except for:

- making calls to emergency services (000 and 112)
- making calls to Savvytel's recharge line (126-711)
- receiving calls and text messages

On expiry of the Grace Period a Customer's allocated number is automatically placed in Quarantine with the ACMA. During the six (6) month quarantine period a Customer can reactivate their account and reclaim/reinstated their allocated number. In the event the account is not re-activated the account will be closed at expiry of the Quarantine period.

23 Complaint Resolution:

If you have any complaint relating to the Service you should:

- contact Savvytel's Customer Care Team, either by phone or email, explaining in detail the nature of the complaint and your expected outcome;
- in the event you are not satisfied with Savvytel's handling of the matter you may pursue your complaint through other sources, namely, with Telecommunications Industry Ombudsman.

24 Service Suspension, Limitation or Termination by Savvytel:

- a) Savvytel may, in its absolute discretion suspend, limit or terminate the provision of the Service on giving a Customer 7 days notice of its intention to do so, or immediately if:
- i) after your account balance falls to \$0 and you do not recharge your account within the Grace Period.
 - ii) a Customer exceeds the Plan Value of their Cap Plan;
 - iii) a Customer does not pay a CAP Plan Tax Invoice on time on two successive months;
 - iv) a Customer is in breach of this Agreement;
 - v) a regulatory authority such as the ACMA instructs Savvytel to do so;
 - vi) there are technical problems with the Network which require corrective action;
 - vi) the use of the Service by any person might damage the Network;
 - viii) a Customer, or someone acting on the Customer's behalf informs Savvytel that their SIM has been lost or stolen;
 - ix) Savvytel believes that a Customer has engaged in fraudulent, criminal or unlawful activity or use of the Service;
 - x) Savvytel has or suspects that its record of information about the Customer contains misleading, false, or incorrect information;
 - xi) Savvytel is required by law or a law enforcement agency to do so;
 - xii) a Customer ports-out their phone number to another service provider;
 - xiii) a Customer dies or is in a business partnership and the partnership dissolves.

Where Savvytel suspends, limits or terminates the Service under this clause it will use its reasonable endeavors to notify the Customer.

The Customer remains responsible for all call charges incurred up to the time of suspension or termination of the Service by Savvytel.

- b) Savvytel may suspend or limit a Customer's Service if in Savvytel's opinion the amount of call charges accrued on a Customer's Cap account is unusually high. In making this determination Savvytel may have regard to matters including the Customer's previous call history, unbilled charges total and any unusual call spending patterns.

25 Termination by Customer:

- a) A Customer may terminate the Service at any time upon giving written notice to Savvytel which can be provided by:
- i) letter - posted to Suite 603, 657 Pacific Highway, St Leonards NSW 2065
 - ii) fax – 02/9906-2466
 - iii) e-mail - accounts@savvytel.com.au

Written notice must contain the Customer's full name, mobile phone number, date of birth and account number.

- b) The Customer acknowledges that a request to port-out a phone number does not result in termination of its rights or obligations as provided for in this Agreement. Subject to Savvytel's termination rights Savvytel will require payment of all outstanding amounts relating to the Service as well as any amounts arising from the port-out.

26 Obligations On Termination of the Service:

On termination of the Service, a Customer must:

- a) return all Savvytel property to Savvytel upon request; and
- b) pay all amounts due to Savvytel under this Agreement.

27 Governing Law And Jurisdiction:

This Agreement is governed by the laws of New South Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales.

28 Force Majure:

Savvytel is not liable for:

- a) any delay in installing the service;
- b) any delay in correcting any fault in the service;
- c) failure or incorrect operation of the service; or
- d) any other delay or default in performance under this agreement,

if it is caused by any event or circumstance reasonably beyond Savvytel's control, including but not limited to war, accident, civil commotion, riot, military action, sabotage, act of terrorism, vandalism, embargo, judicial action, labour dispute, an act of a government or a government authority, acts of god, earthquake, fire, flood, plague or other natural calamity, computer viruses, hacker attacks or failure of the internet or delay, or failure or default by any other supplier.

29 Standard Form of Agreement:

This agreement constitutes a standard form of agreement within the meaning of the ACT.

SECTION 2 THE SERVICE AND CHARGES

2.1 General:

A Customer's access to the Service is via either a pre-paid or CAP Plan account.

The principal Service provides for the making of and receiving voice calls and text messages from a GSM Handset made within Australia. A Customer may also elect to use the call diversion to Voicemail facility and may elect to use other facilities of the Service as detailed in this Section 2.

2.2 Operator Services:

Directory assistance is provided by dialing 1223; an operator will locate a number as requested by the Customer. Overseas directory assistance is provided by dialing 0103. Calls to 1223 are charged at a set rate as a one-off 30 second block, regardless of how long the caller is connected with the 1223 operator.

2.3 Other Services and Facilities:

The following services and facilities are available, and assistance with any of these is available by contacting Savvytel's Customer Care Team on **1300 885 446**:

Voicemail:

This service provides the functionality similar to an answering machine. A personalised greeting of up to 2 minutes long for callers to hear can be recorded. There are four options for an incoming call to be diverted to voicemail: (a) call not answered, (b) number busy, (c) number not contactable (out of range, etc), and (d) unconditional (incoming call will be immediately diverted to voicemail). Voicemail will store a maximum of 20 messages each up to 5 minutes long which can be retrieved by calling your voicemail message bank.

SMS (short message service):

This service provides the ability to send and receive short text message of up to 160 characters in length.

IDD (International Direct Dialing)

This service provides direct access to overseas phone numbers.

Premium SMS:

Premium SMS messages are ones typically used to enter competitions or to subscribe to other services whose prefixes are **19**. These services are charged at the advertised rate set by the Premium SMS provider which typically are substantially more expensive than 'standard' SMS messages. Customers are warned to take extreme caution when accessing or subscribing to a Premium Text service; your account will be charged when the Premium SMS is sent to your phone, regardless of whether you read/accept the message.

MMS (multimedia messaging service):

This service provides the ability to send and receive MMS messages as a combination of text, photos, animations, video or sound on a compatible Handset.

GPRS:

There are two GPRS services available:

- GPRS Internet Access: enables Customers to log into the Internet whilst away from a fixed line connection.
- GPRS WAP Access: enables Customers to access WAP sites over the GSM circuit switched network.

SMSAlert:

By dialing 1218 (free call) Customers can install SMS alert. Once installed, a short "beep" will sound and/or an envelope or text message will appear on the screen of the Customer's Hand piece to alert Customers of new messages. Customers should delete all SMS Alerts as soon as possible to ensure there is sufficient memory to store new messages.

CALLminder

CALLminder is a free service offered to subscribers that have elected NOT to use voicemail. This service allows a caller to send an SMS notification to the subscriber of the call that was missed advising the date and time of the call and the caller's contact number.

CALL wait and CALL hold:

These services allow Customers with certain mobile phones to switch between calls by using commands on their Hand Piece keypad. There are separate codes for activating and deactivating this facility:

- activate: *43#send
- deactivate - #43#send

Call Forwarding: this service diverts the incoming calls to another phone.

Call Barring:

This service is a security option which allows incoming and/or outgoing calls to be barred.

Call Conference:

This service enables a Customer with a conference call capable handset to initiate a conference call to multiple parties, enabling up to 8 participants participate in a conference call. This number may be less depending on the handset and its conference call support features.

All of these services can be used without incurring a monthly subscription fee. Customers only pay for the Service/s used.

Vodafone 123

Calls to 123 connect to a Vodafone operator who can provide directory assistance and you can request that the name and number be sent to your Handset, they can also through-connect you to the requested number and answer to any question you put to them, like finding a restaurant, etc.

2.4 Value Added Services:

The following Value-Added Services are available with the Service:

Operator Services

Directory assistance: a charged service accessed by dialing **1223** - an operator will locate the number. Overseas directory assistance is accessed by dialing **0103**.

Emergency services: accessed by dialing **000** within Australia or **112** from anywhere in the world (a free call).

Network problems: accessed by dialing **1100** to report network difficulty or fault (a free call).

Special Services

These are services provided by third parties which have their own fees and call charge rates. These services include, but are not limited to: Maritime, remote and satellite services; 18xx numbers; 19xx numbers and International numbers. Customers with suitable Handsets may also access internet, fax and data services.

The Customer is responsible for making themselves aware of the fee and charge rates before they use any value added service. Savvytel reserves the right to require a Customer to pay a security deposit before being connected to some Special Services which may be applied against any outstanding fees and charges for the Service should the Customer fail to pay any unpaid amounts.

2.5 Roaming:

Additional charges apply if the Customer accesses Roaming services.

- National Roaming
Customers granted access to roam onto Telstra's network when national roaming. Customers granted access to national roaming will be charged as detailed in our rates on www.savvytel.com.au. A Customer with International Roaming access will automatically have access to National Roaming.
- International Roaming
Customers granted access to the international Network while overseas are charged at the rate levied by the overseas carrier PLUS Savvytel's rates. All incoming calls while roaming will incur roaming charges. To activate global roaming please contact Savvytel Customer Care at least 72 hours prior to. A security deposit may be required.

If a customer already uses International Roaming the customer will automatically have access to National Roaming.

2.6 Service Charges:

Customers are contractually and solely responsible for all Service charges to their account, irrespective of whether those charges were incurred by the Customer or another person. Only connected calls are charged. Savvytel may waive any charge in its absolute and sole discretion. Charges are inclusive of GST (where applicable). Actual charges may vary as all charges are rounded up to the nearest cent before GST is included. Savvytel's charge rates are subject to change at any time and from time to time. There are 3 general categories of charges for the Service:

- a) Service Charges:
Service charges vary between pre-paid and post-paid (CAP) accounts, full details are available on Savvytel's website.
- b) Value-added Services:
Refer to clause 2.3 above.
- c) Other Charges:
 - **Administration and SIM fee: \$19.95** (non refundable) - payable prior to the issue of a SIM to you
 - **Account Administration Fee: \$1.25** per calendar quarter (pre-paid accounts only) - waived if the account has been recharged at least once during the previous three calendar months
 - **Collection Fee: \$5.50** - payable if a Services Charge is rejected from a Customer's credit card (CAP account)
 - **SMS delivery report: \$0.075** per report.
 - **SIM replacement fee: \$19.95** – payable for the issue of a replacement SIM
 - **Statement Fee: \$16.50** - payable if a Customer requires a written statement/invoice in a form different from that emailed to them.
 - **Unbarring Fee: \$16.50** – in the event a Service is "barred" this fee is payable by the Customer to have the Service "unbarred" or reconnect to the Service

In certain circumstances Savvytel may impose additional fees and or charges which are subject to change at any time. All fees and charges quoted are GST inclusive. Savvytel reserves the right to seek reimbursement from Customers for the costs and or fees imposed by third parties processing of a Customer's payment.

If any amount payable by Savvytel to a Customer is not paid because:

- i) Savvytel is unable to locate the Customer; or the Customer has been notified by Savvytel but has not claimed the relevant amount; or
- ii) is otherwise unable to be paid by Savvytel and is not claimed by the Customer within 3 months from the due date, that amount ceases to be owed to the Customer.

Any credit on a pre-paid account cannot be transferred, converted or redeemed for cash and cannot be applied against another Service.

SECTION 3: PRE-PAID SERVICES:

- 3.1 To access the Service you need to apply for a Starter Pack by placing an order on the Website or by phoning Savvytel's office and you acknowledge and agree that Savvytel may seek to verify the information that you submitted with your order.
- 3.2 If your Starter Pack order is accepted it will be dispatched to your address as soon as practicable.
- 3.3 Upon receipt of your Starter Pack you will need to contact Savvytel's office. At this time you will need to confirm whether you are porting your existing phone number from another service provider, and what, if any, additional service facilities you require access to or to be connected with.
- 3.4 Unlike other pre-paid service providers, Savvytel's call credits never expire, however, your account may be subject to Other Charges as detailed in clause 2.6 c) of this Agreement.
- 3.5 You may recharge your account by purchasing a recharge PIN of value between \$10.0 and \$100.00 via the Savvytel Website, or through facilities provided by ePay and Touch. Once you have purchased your PIN, call **126-711** to activate it and add the credit to your account: you will be prompted to enter the details of the Recharge PIN via the keypad on your handset. The Recharge PIN is subject to an activation expiry period ("Recharge Expiry Period") during which time you must activate the Recharge PIN.
- 3.6 You can check the balance of the call credits in your account by calling **126-713**. Savvytel may, but is not obligated to, advise you when the call credits in your account are low. If you exhaust your call credits during a call the call will be automatically disconnected without further warning. You will need to purchase a Recharge PIN to continue using the Service.
- 3.7 When the call credits in your account run low you will be provided with an audible alert to warn you when:
 - the call credits in your account balance falls below \$3.0
 - if while using the Service your call credits fall to a level where you will only have a further 3.0 minutes (approximately) of call time
 - first call of the day - if your call credits are below \$5.0

SECTION 4: POST-PAID (CAP) SERVICES:

- 4.1 Savvytel offers 4 CAP Plan account options: \$20, \$45, \$75 and \$115.
 - 4.2 In addition to the Administration and SIM fee, CAP Customers are required to pay in advance for the 1st month's Cap Plan, ie, on a \$20 CAP Plan the Customer pays \$39.95; on a \$45 CAP Plan the Customer pays \$64.95.
 - 4.3 A Customer will remain on the same Cap Plan until the service is disconnected or written notice is provided to Savvytel to change the Cap Plan in accordance with clause 4.6.
 - 4.4 The Cap Plan billing cycle starts on the 15th of each month at 00:00:00 hrs and ends on the 14th day of the following month at 23:59:59 hrs, Sydney local time. On starting your account you will be charged on a daily pro-rata basis until the end of the current billing period. A Tax Invoice/account statement will be emailed to each CAP Plan Customer on or about the 17th day of each month with payment charged to the Customer's credit card on or about the 23rd day of each month.
 - 4.5 When first connecting to the Service a Customer will be charged and receive the Service on a daily pro-rata basis, ie, if connected half way through a billing cycle you will only receive half the value of the CAP Plan purchased.
 - 4.6 A Customer may change their Cap plan once per month by written request received by Savvytel before 5.0pm on the 25th day of the month. A change in Cap Plan is limited to stepping up or down one plan level, ie, a Customer on a \$75 plan may step up to a \$115 plan or step down to a \$45 plan.
 - 4.7 Your minimum monthly charge will be your Cap Plan amount, but may be more if the cost of the Service exceed the monthly value for that plan, ie, a \$20 plan gives \$120 of Included Calls. Cap. Note: International Roaming, Premium Text, MyVodafone Txt Services and Call to Vodafone Services are NOT Included Calls and you will be charged for them.

Your minimum monthly charge will apply until the Service is cancelled, which can only be done upon Savvytel receiving written instructions from you; this can be done by either emailing accounts@savvytel.com.au or posting a letter to our office.
 - 4.8 Cap Plan charges cannot be temporarily stopped in the event a Customer does not intend to use the Service for a period of time, like travelling overseas.
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